



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 18, 1996

Mr. Tracy Pounders
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR96-0053

Dear Mr. Pounders:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36809.

The City of Dallas (the "city") received an open records request that you indicate was received by the city on September 26, 1995. The requestor asked for documents "relating to the criminal case resulting from the fire investigation at 6106 Keller Springs Road on Jan. 3, 1990." You assert that the requestor agreed to allow the city to extend the ten day period for requesting a decision from this office "until a reasonable time after" the requestor indicated she still wished to have access to certain insurance investigation files responsive to the request. You also state that, on October 20, 1995, the requestor's attorney sought release of the insurance investigation files to the requestor. The city did not request a decision from this office concerning the files at issue until October 31, 1995.

We note initially that Government Code chapter 552 was substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (to be codified as amendments to Gov't Code ch. 552). Section 552.301, as amended, provides that:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under [chapter 552] must ask for a decision from the attorney general about whether the

information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply *within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.*

(Emphasis added.)

Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for information. Failure to abide by this provision results in the presumption that information is public. Gov't Code § 552.302.

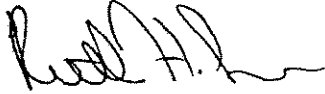
However, chapter 552 contains no provisions authorizing a governmental body and a requestor to "agree" to toll the ten day statutory limit in which a governmental body must seek a decision from this office. The ten day deadline may be tolled during the period that a requestor and a governmental body attempt to resolve access to the records informally, but only if there is actually legitimate confusion as to the scope of the request. Open Records Decision No. 333 (1982). If circumstances exist that this office has recognized as justified for tolling the ten day time period, the governmental body must explain those circumstances when it requests a decision from this office. *See* Open Records Decision No. 333 (1982). However, it does not appear that there was confusion as to the scope of the request. Even had there been such confusion, your request for a decision from this office was also submitted more than ten days after the requestor's attorney made clear that the requestor wanted access to the insurance investigation records.

The presumption that information is public when the ten day deadline is not met can only be overcome by a compelling demonstration that the information at issue should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). You indicate that the insurance investigation files at issue were supplied to the city pursuant to article 5.46(A) of the Insurance Code, which provides that insurance companies are required, upon request by a fire marshall, fire department chief, or a peace officer to provide certain fire loss investigation information. Article 5.46(D) provides that the entities receiving this information must hold the information as confidential until or unless release is required pursuant to a criminal or civil proceeding. Thus, the information at issue is made confidential by statute and may not be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 36809

Enclosures: Submitted documents

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